

PR 2008/11A2 - Addendum - Income tax: AIL Almond Grower Project - Swan Hill: 2008 Growers (to 15 June 2008)

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Addendum

Product Ruling

Income tax: AIL Almond Grower Project – Swan Hill: 2008 Growers (to 15 June 2008)

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Ruling PR 2008/11 to exercise the Commissioner's discretion under Section 35-55 of the *Income Tax Assessment Act 1997* for the financial years ended 30 June 2014 and 30 June 2015, provided certain conditions are met.

PR 2008/11 is amended as follows:

1. Paragraph 28

After the paragraph insert:

28A. For the financial years ending **30 June 2014 and 30 June 2015**, the Commissioner will exercise the discretion in subsection 35-55(1) once the following conditions are satisfied:

- the Grower carried on their business of almond growing during the financial year;
- the business activity that is carried on is not materially different to that in the scheme described in paragraphs 30 to 106; and
- the Grower has incurred a taxation loss for the income year from carrying on that business activity.

28B. If these conditions are met for the financial years ending 30 June 2014 and 30 June 2015, the Commissioner will exercise the discretion under:

- Paragraph 35-55(1)(b) for a Grower in the Project who satisfies the income requirement in subsection 35-10(2E); and
- Paragraph 35-55(1)(c) for a Grower in the Project who does not satisfy the income requirement in subsection 35-10(2E).

28C. In any year where the discretion is not exercised, losses incurred by a Grower will be subject to the loss deferral rule in section 35-10 and the Grower will not be able to offset the losses from the Project against other assessable income.

2. Paragraph 29

In the first dot point, omit 'paragraphs 124 and 125'; substitute 'paragraphs 122 and 123'.

3. Paragraph 30

Omit last two dot points; insert:

- Draft **Loan Agreement** between Almond Investors Finance Pty Ltd and a Borrower, received on 31 August 2007;
- Draft **Terms Payment Agreement** between AIL (the Responsible Entity of the Project) and a Grower, received on 31 August 2007;
- Report dated February 2013 titled 'Orchard Inspection and General Discussion on Recent Yield Variability within Australian Almond Orchards', received 6 October 2014;
- Report dated December 2013 titled 'Independent Assessment of Almond Investors Limited Orchards at Piangil', received 6 October 2014; and
- ALL Almond Grower Project – Swan Hill (Stage 2 – 2008) After Tax Analysis for a Grower for the financial years ended 30 June 2014 through 30 June 2025, received 6 October 2014.

4. Paragraph 131

After the paragraph insert:

131A. The Responsible Entity advised on 6 October 2014 that the almond growing business of Growers would not produce a tax profit in the financial years ending 30 June 2014 or 30 June 2015, and requested the Commissioner extend his discretion to allow losses to be claimed in these financial years. The Responsible Entity has forecast that Growers will make tax profits in each of the financial years ending 30 June 2016 to 30 June 2025. The Commissioner accepts that the period of the requested extension is within the lead time for the almond growing industry.

131B. Where, in the financial years ended 30 June 2014 and/or 30 June 2015, a Grower with income for non-commercial loss purposes of less than \$250,000 (that is, the Grower satisfies the income requirement in subsection 35-10(2E)) incurs a loss from carrying on their business activity the discretion in subsection 35-55(1)(b) is exercised for that year, because the Commissioner has determined:

- it is because of its nature that the business activity of the Grower will not satisfy one of the four tests in Division 35; and
- there is an objective expectation that within a period that is commercially viable for the almond growing industry, the Grower's business activity will satisfy one of the four tests set out in Division 35 or produce assessable income for a financial year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

131C. Where, in the financial year ended 30 June 2014 and/or 30 June 2015, a Grower with income for non-commercial loss purposes of \$250,000 or more (that is, the Grower does not satisfy the income requirement in subsection 35-10(2E)) incurs a loss from carrying on their business activity, the discretion in paragraph 35-55(1)(c) is exercised for that year, because the Commissioner has determined:

- it is because of its nature that the business activity of the Grower will not produce assessable income greater than the deductions attributable to it; and
- there is an objective expectation that within a period that is commercially viable for the almond growing industry, the Grower's business activity will produce assessable income for a financial year greater than the deductions attributable to it for that year (apart from the operation of subsections 35-10(2) and (2C)).

131D. The exercise of the Commissioner's discretion under paragraph 35-55(1)(b) or 35-55(1)(c) is conditional on the Project being carried on the manner described in paragraphs 30 to 106 of this Product Ruling during the financial years specified. If the Project is carried out in a materially different way to that described in this Product Ruling, a Grower will need to apply for a private ruling on the application of section 35-55 to those changed circumstances.

131E. In each individual year where the Commissioner's discretion is exercised, a Grower within the meaning of either paragraph 131B or paragraph 131C of this Product Ruling, who would otherwise be required to defer a loss arising from their participation in the Project under section 35-10 until a later financial year, is able to offset that loss against their other assessable income.

5. Legislative references

Insert:

- ITAA 1997
- ITAA 1997 35-10(2C)
- ITAA 1997 35-10(2E)
- ITAA 1997 35-55(1)
- ITAA 1997 35-55(1)(c)

6. Case references

(a) Omit:

- Commissioner of Taxation v. Lau (1984) 6 FCR 202 84 ATC 4929 (1984) 16 ATR 55

(b) Insert:

- Commissioner of Taxation v. Lau (1984) 6 FCR 202; 84 ATC 4929; (1984) 16 ATR 55

This Addendum applies on and from 19 November 2014.

Commissioner of Taxation

19 November 2014

ATO references

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